

1 Despite this Court's April 16, 2010 order to file an amended petition, and this Court's July
2 19, 2010 order sending petitioner a copy of his petition so that he could refer to it in drafting an
3 amended petition, to date, petitioner has not filed an amended petition. Petitioner was warned that
4 failure to obey the Court's order to file an amended petition may result in dismissal of this action.
5 (Docket #2, at p. 2). The Court has authority to dismiss this action on the basis of petitioner's failure
6 to obey the order to file an amended petition.

7 In addition, the petition must be dismissed as premature and unexhausted. A federal court
8 will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted his
9 available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C.
10 § 2254(b). A petitioner must give the state courts a fair opportunity to act on each of his claims
11 before he presents those claims in a federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838,
12 844 (1999); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted
13 until the petitioner has given the highest available state court the opportunity to consider the claim
14 through direct appeal or state collateral review proceedings. *See Casey v. Moore*, 386 F.3d 896, 916
15 (9th Cir. 2004); *Garrison v. McCarthy*, 653 F.2d 374, 376 (9th Cir. 1981).

16 A habeas petitioner must "present the state courts with the same claim he urges upon the
17 federal court." *Picard v. Connor*, 404 U.S. 270, 276 (1971). The federal constitutional implications
18 of a claim, not just issues of state law, must have been raised in the state court to achieve exhaustion.
19 *Ybarra v. Sumner*, 678 F. Supp. 1480, 1481 (D. Nev. 1988) (citing *Picard*, 404 U.S. at 276)). To
20 achieve exhaustion, the state court must be "alerted to the fact that the prisoner [is] asserting claims
21 under the United States Constitution" and given the opportunity to correct alleged violations of the
22 prisoner's federal rights. *Duncan v. Henry*, 513 U.S. 364, 365 (1995); *see Hiivala v. Wood*, 195
23 F.3d 1098, 1106 (9th Cir. 1999). It is well settled that 28 U.S.C. § 2254(b) "provides a simple and
24 clear instruction to potential litigants: before you bring any claims to federal court, be sure that you
25 first have taken each one to state court." *Jiminez v. Rice*, 276 F.3d 478, 481 (9th Cir. 2001) (quoting
26 *Rose v. Lundy*, 455 U.S. 509, 520 (1982)).

1 In the instant case, petitioner is a pretrial detainee and his criminal proceedings are still
2 pending. The federal habeas petition is premature and the claims therein remain unexhausted. The
3 federal petition will be dismissed without prejudice.

4 In addition, petitioner complains about judicial officers and proceedings in his criminal
5 prosecution. Petitioner seeks an order from this court requiring the state courts to take some form of
6 action. Federal courts have no jurisdiction to direct a state court's proceedings. *Carriger v. Stewart*,
7 95 F.3d 755, 762 (9th Cir. 1996) (*overruled on other grounds*, 132 F.3d 463 (9th Cir.1997); *Franzen*
8 *v. Brinkman*, 877 F.2d 26 (9th Cir. 1989) (per curiam) (collecting cases), *cert. denied*, 493 U.S. 1012
9 (1989)). The petition, which is unexhausted and requests relief this Court lacks jurisdiction to give,
10 will be dismissed.

11 Finally, on October 25, 2010, the Court received a letter from Waverlyn White, who
12 identifies herself as petitioner's mother. (Docket #6). The letter is addressed to Captain Donahue at
13 the Clark County Detention Center. (*Id.*, at p. 1). In the letter, Ms. White states that she believes her
14 son's constitutional rights have been violated, and that petitioner is being "roughed up and beaten."
15 (*Id.*). Attached to the letter from Ms. White is a document, apparently written by petitioner, entitled
16 "Urgent/Emergency Notice to the Court." (Docket #6, at p. 2). In this document, petitioner states
17 that he tried to give an unnamed correctional officer legal mail in another lawsuit filed in this Court.
18 Petitioner alleges that several correctional officers "roughed" him up or "beat" him up in retaliation
19 for him trying to send out legal mail. (Docket #6, at p. 2). To the extent that petitioner seeks relief
20 for the alleged actions of the correctional officers, he may file a civil rights action pursuant to 42
21 U.S.C. § 1983. A civil rights action, rather than the instant habeas action, is the appropriate way to
22 challenge unfavorable prison conditions. The Court will direct the Clerk to send petitioner the
23 appropriate form and instructions for filing a civil rights action. Petitioner is advised that, if he
24 chooses to file a civil rights complaint, he may not file it in the instant action, but must initiate a new
25 action.

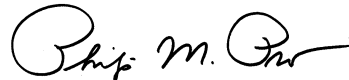
1 **IT IS THEREFORE ORDERED** that the instant action is **DISMISSED** due to petitioner's
2 failure to obey this Court's order to file an amended petition AND on the ground that the petition
3 fails to state a cognizable claim for habeas corpus relief.

4 **IT IS FURTHER ORDERED** that the Clerk **SHALL SEND** petitioner the approved form
5 for filing a civil rights complaint under 42 U.S.C. § 1983, as well as instructions.

6 **IT IS FURTHER ORDERED** that if petitioner chooses to file a civil rights complaint, he
7 may not file it in the instant action, but must initiate a new action. No further pleadings shall be
8 filed in this closed action.

9 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly.

10
11 DATED: November 15, 2010.

12
13 

14 PHILIP M. PRO
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26